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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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| 08/952,194      | 11/10/97    | TSZYAN KANCHZHEN     | U011457-4           |

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QM12/1124

EXAMINER

SCHAETZLE, K

| ART UNIT | PAPER NUMBER |
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3737

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DATE MAILED:

11/24/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
08/952,194

Applicant(s)  
Vladimirovich

Examiner  
Ken Schaetzle

Group Art Unit  
3737



☒ Responsive to communication(s) filed on Sep 1, 1999

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-8 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-8 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☒ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☒ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 3

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

*Ken Schaetzle*  
Ken Schaetzle  
AU 3737  
Nov. 22, 1999

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## DETAILED ACTION

### *Specification*

1. The abstract of the disclosure is objected to because it is not sufficiently descriptive of the claimed invention. The examiner suggests incorporating a statement pertaining to the purpose of the device. Correction is required. See MPEP § 608.01(b).
2. 35 U.S.C. 112, first paragraph, requires the specification to be written in "full, clear, concise, and exact terms." The specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112, first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are: "This device allows to transmit..." (page 1, line 8); "As a source of biofield can be used the hands of the operator who..." (page 2, lines 11-13); "...this case is sued a source of information supply..." (page 2, lines 23 and 24); "compargtment" (page 6, line 16); "...biofield must be used green mass of melon..." (page 10, line 17), etc.

### *Claim Objections*

3. Claims 7 and 8 are objected to because of the following informalities: the phrase "...as the source..." is grammatically awkward. Appropriate correction is required.

### *Claim Rejections - 35 USC § 101/112*

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1-8 are rejected under 35 U.S.C. 101 because the claimed invention is not supported by either a credible asserted utility or a well established utility.

The asserted utility of transmitting a natural information supply to a biological object to "...replenish the biofield of the object..." to "...eliminate possible pernicious influence on a

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biological object of a source's biofield that has been harmfully affected during its intercourse with another object..." to "...change features of an animal or plant..." would more likely than not have been questioned by those of ordinary skill in the health care or husbandry arts. Note in particular MPEP 2107(b) wherein the courts have stated that inventions purporting to change the taste of food via magnetic fields (note page 10 first full paragraph of the present specification) or control the aging process (note page 1, line 26- page 2, line 5 of the present specification), are utilities which are inconsistent with known scientific principles. Since the validity of such utility claims have previously been questioned by those of ordinary skill in the art, so too must the present substantially similar claims for utility be questioned.

The disclosed invention is also inoperative and therefore lacks utility. Given the minuscule amounts of energy and the known types of energy being given off by a biological object such as a plant or animal, it would be highly suspect to those of ordinary skill in the art that said energy could be collected, focused, and transmitted at a distance passively to a second object, causing said second object to take on certain beneficial characteristics of the first object. The transmission of genetic code from one object to another via transmission of the so-called bioelectromagnetic field without physical contact is clearly at odds with all known, scientifically acceptable, genetic research.

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 1-8 are also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a credible asserted utility or a well established utility

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for the reasons set forth above in the rejection under 35 U.S.C. § 101, one skilled in the art clearly would not know how to use the claimed invention.

*Response to Arguments*

8. Applicant's arguments filed September 1, 1999 have been fully considered but they are not persuasive.

The applicant refers the examiner to an IDS statement (paper no. 3) previously submitted as support for utility of the subject matter disclosed. The examiner has already previously considered the documents listed thereon, deeming them insufficient to obviate a rejection under §101/112. A copy of the signed-off IDS enclosed in the previous Office Action will be included in the present Action for the convenience of the applicant.

Regarding the use of a "biotron" to focus the biofield with a power one hundred times greater than non-focused plant biofields, the examiner reiterates that it would be highly suspect to those of ordinary skill in the art that said energy could be collected, focused, and transmitted at a distance passively to a second object, causing said second object to take on certain beneficial characteristics of the first object. Even if the "biotron" were capable of providing such amplification, with the known types of energy emanating from the body (e.g., infrared radiation), it is unclear that such desired effects could be realized.

As for the assertion that there would be no further inventions if all utilities were considered contradictory to known scientific principles, the examiner is not inferring that all utilities violate such principles --just the applicant's.

Finally, it is not quite clear what point the applicant is making by stating "...the idea of physical contact is not provided by a field is not a modern view of physicists..." It appears the applicant is inferring that physical contact is not needed to perform such feats as employing the "biofield" of a melon to act on cucumber seeds and generate a new breed of cucumbers having a melon smell. Given the fact that it is reasonable to doubt the utility of the applicant's invention

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as discussed in MPEP 2107(b), the burden to prove utility shifts to the applicant. Considering the lack of scientific evidence to support the applicant's position, the rejection stands.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ken Schaetzle whose telephone number is (703) 308-2211. The examiner can normally be reached on Mondays through Fridays from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marvin Lateef, can be reached on (703) 308-3256. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Ken Schaetzle  
AU 3737

November 22, 1999

